



DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 220105-0003]

RIN 0648-BL05

Fisheries of the Northeastern United States; Atlantic Mackerel; 2022 Interim Action

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Temporary rule; interim measures; request for comments.

SUMMARY: This temporary rule implements interim specifications for the 2022 fishing year to address new assessment information regarding the status of the Atlantic mackerel stock. This action is intended to reduce potential Atlantic mackerel overfishing based on new 2021 assessment findings while a rebuilding plan is being developed.

DATES: Effective [*insert date of filing for public inspection in the FEDERAL REGISTER*], through July 11, 2022. Comments must be received by [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: You may submit comments on this document, identified by NOAA-NMFS-2021-0137 by either of the following methods:

Electronic Submission: Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to <https://www.regulations.gov> and enter NOAA-NMFS-2021-0137 in the Search box. Click on the “Comment” icon, complete the required fields, and enter or attach your comments.

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be

posted for public viewing on *www.regulations.gov* without change. All personal identifying information (*e.g.*, name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter “N/A” in the required fields if you wish to remain anonymous).

The supporting documents for the action are available upon request from Dr. Christopher M. Moore, Executive Director, Mid-Atlantic Fishery Management Council, Suite 201, 800 N. State Street, Dover, DE 19901. These documents are also accessible via the Internet at *https://www.mafmc.org*.

FOR FURTHER INFORMATION CONTACT: Aly Pitts, Fishery Management Specialist, (978) 281-9352.

SUPPLEMENTARY INFORMATION:

Background

The Mid-Atlantic Fishery Management Council (Council) manages the Atlantic mackerel fishery under the Mackerel, Squid, and Butterfish (MSB) Fishery Management Plan (FMP). Section 305(c) of the Magnuson-Stevens Act allows the Secretary to implement interim measures to reduce or address overfishing. In situations such as this, in which the Mid-Atlantic Council has begun the development of a rebuilding plan, section 304(e)(6) allows the Council to request the Secretary to implement interim measures to reduce overfishing, even if such measures are not sufficient themselves to stop overfishing, until such measures can be replaced by the rebuilding plan. As further described below, NMFS implements this action to adjust the domestic annual harvest (DAH, or commercial quota) from the previously implemented amount of 17,312 metric tons (mt) to 4,963 mt in order to minimize overfishing while the Council responds to the most recent stock assessment information and completes work on a revised rebuilding

plan. This revised DAH takes into account new information on Canadian harvest and U.S. recreational landings.

The 2017 stock assessment indicated that Atlantic mackerel was overfished and subject to overfishing. To end overfishing and rebuild the species, the Council adopted a rebuilding plan under Framework Adjustment 13 to the Mackerel, Squid, and Butterfish FMP (84 FR 58053; October 30, 2019). The rebuilding plan became effective in November 2019 and set Atlantic mackerel catch levels to prevent overfishing and rebuild the stock by 2023 based on the strength of a larger than average year class from 2015. However, shortly after the rebuilding program was implemented, updated information, including a Canadian stock assessment, suggested that more recent recruitment was lower than expected when specifications were set in the original rebuilding plan. In response, the Council maintained, and we implemented, the overall 2019 acceptable biological catch (ABC) (29,184 mt) and DAH (17,312 mt) through 2023 instead of increasing catch levels based on expected rebuilding progress as a precautionary measure to help the species continue to rebuild as planned. On July 22, 2021, we published a final rule in the **Federal Register** (86 FR 38586), implementing the previously approved 2021-2022 Atlantic mackerel specifications to maintain the 2020 specifications.

At its July 2021 meeting, the Council's Scientific and Statistical Committee (SSC) reviewed the 2021 management track assessment results from the Northeast Fisheries Science Center, which concluded that Atlantic mackerel remains overfished, overfishing is occurring, and the 2015 recruitment has not been as productive as expected. Based on this information, the SSC recommended that measures be implemented to eliminate or minimize additional catch for the rest of 2021 and 2022. At its August 2021 meeting, the Council requested that NMFS take action to reduce potential mackerel overfishing while it develops a rebuilding plan for this species during the 2022 fishing year. In response to the Council's request and to address concerns over

2021 catch, we recently published an in-season action reducing the mackerel possession limit to 5,000 lb (2,268 kg) for the remainder of 2021 (86 FR 57376; October 15, 2021) to minimize landings and overfishing based on the latest scientific information. We have also projected that the U.S. commercial fishery is expected to land over 5,400 mt of Atlantic mackerel during 2021. Therefore, taking into account new estimates of Canadian landings and U.S. recreational harvest, this rule will adjust the commercial 2022 DAH to 4,963 mt so that total catch in 2022 is similar to 2021.

Interim Atlantic Mackerel Specifications for 2022

Based on the recommendations of the SSC, the MSB Monitoring Committee, and the Council, this action sets the 2022 Atlantic mackerel specifications, specifically the DAH to 4,963 mt. These specifications also maintain the 129-mt river herring and shad catch cap. There is an Atlantic mackerel stock assessment update scheduled for 2022 that will inform future ABC specifications.

This temporary rule has an effective period limited by the Magnuson-Stevens Act to 180 days, with a potential extension of an additional 186 days. The Council has begun development of a revised rebuilding plan which it intends to be implemented by January 1, 2023. However, if the expected rulemaking implementing the rebuilding plan is not in place before the expiration of this rule (180 days following publication), an extension of the interim measures for 186 days will be considered.

Justification for Interim Measures

Section 305(c) of the Magnuson-Stevens Act (16 U.S.C. 1855(c)) authorizes the Secretary of Commerce to implement interim measures to address overfishing. This action meets the 305(c) requirements for interim measures because it is necessary to minimize overfishing on the Atlantic mackerel stock that remains overfished while the Council develops a new rebuilding program for the stock.

While some changes resulting from the 2021 stock assessment were expected, the magnitude of the shift in the perception of stock status necessitating changes to the catch limits was not, and could not have been, foreseen. The assessment results only recently became available, after the Council took final action on, and we implemented, the 2022 specifications. Based on this new information, and only two years after the implementation of the original rebuilding program for mackerel, the Council must develop a new rebuilding plan to incorporate the most recent scientific information. However, given that the new information only recently became available, the Council could not complete an action to develop a new rebuilding plan and adjust specifications in time for the fishing year. Because of unforeseen specification adjustments necessary to address the recent stock assessment, the Council requested that NMFS take action to reduce potential additional Atlantic mackerel harvest in 2022 via a reduction in the commercial quota while the Council modifies Atlantic mackerel rebuilding for 2023. Delayed implementation of these measures increases the risk and magnitude of overfishing for 2022 by allowing the current 17,312 mt commercial catch rather than 4,963 mt, implemented by this rule.

These interim measures are intended to minimize overfishing in the Atlantic mackerel fishery and additional negative impacts to the already overfished fishery resource. Therefore, avoiding the serious conservation and management problem of subjecting the overfished Atlantic mackerel stock to continued overfishing conditions due to reasonably unforeseen circumstances justifies these interim measures, and outweighs the benefit of advance notice and comment.

Renewal of Interim Regulations

The Magnuson-Stevens Act limits NMFS' authority to implement interim measures for an initial period of 180 days, with a potential extension up to an additional 186 days, if warranted. The public has an opportunity to comment on the specification

measures in this temporary rule (see **ADDRESSES**). After considering public comments on this rule, NMFS may extend the interim measures for one additional period of not more than 186 days to maintain the interim measures until permanent rulemaking can be implemented.

Classification

NMFS issues this action pursuant to section 305(c) of the Magnuson-Stevens Act. This action is required by 50 CFR part 648, which was issued pursuant to section 304(b).

The Assistant Administrator for Fisheries, NOAA, finds that it would be unnecessary and contrary to the public interest to provide for prior notice and an opportunity for public comment, pursuant to 5 U.S.C. 553(b)(B). This action reduces the allowable Atlantic mackerel catch based on new assessment information that recently became available. This adjustment is allowed pursuant to section 305(c) of the Magnuson-Stevens Act in order to minimize overfishing while the Council responds to the new, updated information. A delay would be contrary to the public interest for the Atlantic mackerel fishery. Implementing a reduced DAH was anticipated and discussed during development and implementation of the original specifications action (86 FR 38586, June 22, 2021), as well as at the August and October 2021 Council meetings. Fishery stakeholders are anticipating action to reduce mackerel harvest in 2022, and they will have the opportunity to comment on this action in response to the current public notice.

Where the public has had an opportunity to review the development of the Council motion to reduce Atlantic mackerel catch for 2022 based on the best available science (the purpose of this action), the value of a delay in its effectiveness would be outweighed by the need to implement this adjustment as quickly as possible. Failure to implement this action as quickly as possible for the 2022 fishing year could result in 2022 catch that could have potential negative biological impacts, as well as the potential to

result in lower catch limits in the future than would otherwise be required by the new rebuilding plan. The Atlantic mackerel fishery is active in November-February. Given the high-volume nature of the fishery and the reduced DAH, it is likely that the fishery will exceed the DAH. A delay would be contrary to the public interest while we take action to reduce potential mackerel overfishing while the Council responds to recent scientific information and develops a rebuilding plan and new specifications for this species. For the same reasons, the Assistant Administrator finds good cause under 5 U.S.C. 553(d)(3) to waive the 30-day delay of effectiveness period for this. This rule should be effective as close to January 1, 2022, as possible, to fully realize the intended benefits to this high-volume fishery that is most active during the November-February months.

This action is being taken pursuant to the 305(c) emergency action and interim measures provision of the Magnuson-Stevens Act and is exempt from OMB review.

This temporary rule is has been determined to be not significant for purposes of Executive Order 12866.

This rule does not duplicate, conflict, or overlap with any existing Federal rules.

This action would not establish any new reporting or record-keeping requirements.

This interim rule contains no information collection requirements under the Paperwork Reduction Act of 1995

Authority: 16 U.S.C. 1801 *et seq.*

Dated: January 6, 2022.

Samuel D. Rauch, III,
Deputy Assistant Administrator for Regulatory Programs,
National Marine Fisheries Service.

